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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

09-CR-00466(BMC)

-against-

United States Courthouse  
Brooklyn, New York

February 11, 2019  
9:30 a.m.

JOAQUIN ARCHIVALDO GUZMÁN  
LOERA,

Defendant.

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TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL  
BEFORE THE HONORABLE BRIAN M. COGAN  
UNITED STATES DISTRICT JUDGE, and a jury.

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25 Proceedings recorded by computerized stenography. Transcript  
produced by Computer-aided Transcription.

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1 (In open court; jury not present.)

2 (Defendant enters the courtroom 3:15 p.m.)

3 THE COURTROOM DEPUTY: All rise.

4 THE COURT: Have a seat, please.

5 Okay. We have three notes from the jury. The first  
6 one says two things: First, it says: Can we please have the  
7 testimony of Scott Schoonover?

8 We've marked that as Court Exhibit 13.

9 (Court's Exhibit 13 received in evidence.)

10 THE COURT: It then goes on to say: Can we please  
11 leave at 4:15?

12 Court Exhibit 14 is: We are requesting Cliffton  
13 Harrison's testimony.

14 (Court Exhibit 14 received in evidence.)

15 THE COURT: I understand the parties have pulled  
16 together the testimony of those two witnesses and we are going  
17 to read it to the jury; is that right?

18 MR. PURPURA: That's correct.

19 MS. PARLOVECCHIO: Yes, Your Honor. We have pulled  
20 it together. We are also fine with sending it back to the  
21 jury if that would expedite things since there's less than an  
22 hour left to the day.

23 MR. PURPURA: Whatever the Court decides, obviously,  
24 would be appropriate, but if you are going to send it back, I  
25 would ask the Court again to instruct the jury the same way

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1 you instructed the jury on the first time; they should give no  
2 greater weight to this than the other evidence.

3 THE COURT: Okay. I will remind them of that. It's  
4 about 15 to 20 pages, as I understand it, each witness, which  
5 probably means about 20 minutes of reading. It's right on the  
6 border, really.

7 MR. LICHTMAN: Judge, I would ask -- I think you had  
8 mentioned last week that if it was up to an hour, you would  
9 read it back. It's only going to be --

10 THE COURT: I don't recall saying that. That seems  
11 a bit long for me, but if you want me to read it to them, we  
12 will.

13 MR. LICHTMAN: I would rather.

14 THE COURT: Okay.

15 Now, the harder question that you don't know about  
16 is Court Exhibit 15, which says: Does a violation have to be  
17 proven or not proven unanimously?

18 (Court Exhibit 15 received in evidence.)

19 THE COURT: How would the parties like me to answer  
20 that? I think the Government's turn.

21 MS. PARLOVECCHIO: Your Honor, at least three of  
22 them must be proven unanimously.

23 MR. PURPURA: Violations must be proven unanimously  
24 beyond a reasonable doubt. You can even say all 12 -- to make  
25 it simple, all 12 must agree to a violation.

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1 MR. LICHTMAN: Any violation.

2 MS. PARLOVECCHIO: Your Honor, I think it's in the  
3 jury instructions. Perhaps it would just be easier between  
4 the parties, since we've already agreed to the jury  
5 instructions, to direct their attention to the particular  
6 portion of the jury instructions that addresses this issue.

7 THE COURT: Yes. I think that's the thing to do.  
8 It is in there. I think there's some chance that they're  
9 unsure whether they have to agree on all 27 of Count One,  
10 because I'm not sure the instructions expressly told it. They  
11 did, by implication, that in order to convict on Count One,  
12 they have to unanimously agree on Three; and the implication  
13 being they don't have to unanimously agree on the others if  
14 they agree on Three. But I think the better course is to  
15 refer them back to the instructions where we did define this.

16 Does anyone have the page number where that would  
17 be? Let's take a look before we bring them in.

18 MS. PARLOVECCHIO: We can take a look, Your Honor.

19 THE COURT: Okay.

20 MS. PARLOVECCHIO: Your Honor, this is addressed in  
21 the jury instructions on the penultimate paragraph of page 49  
22 through the first paragraph on the top of page 50.

23 MR. PURPURA: Page 49? I'm sorry.

24 MS. PARLOVECCHIO: Yes, starting at the bottom of  
25 page 49 through the top of page 50. So starting with "respect

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1 to the second element of Count One."

2 THE COURT: Yes, that's it.

3 Defense agrees?

4 MR. PURPURA: One second, Your Honor, please.

5 THE COURT: Okay.

6 MR. BALAREZO: Were was it again?

7 THE COURT: The incomplete paragraph at the bottom  
8 of page 49 continuing on to page 50.

9 MR. PURPURA: It's obvious -- it's acceptable, yes.

10 THE COURT: Okay.

11 All right. Let's bring the jury in, please.

12 You should sit. It's going to take a while to line  
13 them up.

14 (Pause.)

15 MS. PARLOVECCHIO: Your Honor, just briefly, in  
16 regards to the instruction Your Honor is going to read to the  
17 jury, we would also request that we read --

18 THE COURT: Oh, I'm not going to read it to them.

19 MS. PARLOVECCHIO: Oh, you're not. You are just  
20 going to direct --

21 THE COURT: I'm just going to direct them to the  
22 page number.

23 MS. PARLOVECCHIO: Okay. Because the paragraph  
24 before the last paragraph on the bottom of page 49 may also  
25 address the issue as to whether they have to find unanimously

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1 in all 27 to the extent there's confusion about that.

2 THE COURT: Yes, I'm going to give both paragraphs.

3 MR. PURPURA: Your Honor, even though you are going  
4 to read to them, you will still give them the same general  
5 instruction you gave earlier on the first request?

6 THE COURT: Yes.

7 (Jury enters 3:26 p.m.)

8 THE COURT: All right. Everyone be seated.

9 Hello there, ladies and gentlemen. We have your  
10 three notes. With regard to the testimony of Scott Schoonover  
11 and Cliffton Harrison, those are both fairly short, and since  
12 my preference is to read it to you when it's not too long, we  
13 are going to have the court reporters read it to you, so  
14 please listen carefully. We'll start with the testimony of  
15 Scott Schoonover.

16 (Record read.)

17 THE COURT: How many pages was that? Let me ask the  
18 reporter.

19 THE COURT REPORTER: Twenty-two.

20 THE COURT: How long is the next witness? How many  
21 pages?

22 THE COURT REPORTER: It's a little longer, Judge.

23 THE COURT: I think I'm going to send it back.

24 I will remind you, ladies and gentlemen, whether you  
25 hear the testimony reread to you orally here in court or you

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1 get a physical copy of the transcript, don't take out of  
2 context anything you hear here or bring back into the jury  
3 room with you. You have got to evaluate the testimony as a  
4 whole and not give any particular weight to any one particular  
5 piece of evidence. So we'll send that back in for you to  
6 have.

7 In addition, you've asked a question of whether a  
8 violation has to be proven or not proven unanimously. That  
9 question is answered in the instructions that you have. I'm  
10 going to refer you to the last two paragraphs on page 49 that  
11 carry over onto the top of page 50 and that should answer that  
12 question for you.

13 And then, lastly, we have your request that you  
14 again leave at 4:15 today. That is, of course, fine. I will  
15 take this opportunity to give you the usual admonitions about  
16 not communicating, staying away from media coverage, not  
17 posting anything about this, and keeping it out of your mind  
18 entirely until you are all back in the jury room tomorrow at  
19 9:30. So from the time you leave, you stop talking about the  
20 case and you don't start talking until all 12 of you are back  
21 there again tomorrow morning.

22 So have a good night. Thanks again for your hard  
23 work. We know this isn't easy and we appreciate it.

24 Thank you.

25 (Jury exits 3:48 p.m.)



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1 THE COURT: Okay. Unless we get any other requests  
2 from the jury, we will stand in recess until tomorrow.

3 MS. PARLOVECCHIO: Thank you, Your Honor.

4 MR. BALAREZO: Thank you, Judge.

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6 (Matter adjourned to February 12, 2019, at 9:30 a.m.)

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